(3)

IN THE HIGH COURT OF JUDICATURE OF MADHYA PRADESH AT JABALPUR.

Writ Petition No. 744 of 98.

Petitioner : Ramakant Swarnkar son of Shri K.B.L.Swarnkar, aged about 52 years, Occupation U.D.T.Dau R.P.National Higher Secondary School Durg (M.P)

-Versus-

Respondents : 1. State of M.P.through Commissioner Education Department M.P.Bhopal.

2. Director Public Instruction M.P.Bhopal.

3. Joint Durector Public Instruction Durg Division, Durg (M.P)

4. Principal, Dau, R.P.National Higher Secondary School Durg (M.P)

5. Chairman District Education Society C/O Dau R.P. National Higher Secondary School Durg (M.P)

Copy of Petition With Annexures
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O/o. Advocate General
M. P. JABALPUR

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA SEEKING A WRIT IN THE NATURE OF CERTIORARI, MANDAMUS PROHIBITIONS AND DIRECTION AND/OR ORDER

DETAILS OF PETITION

(52)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 744 of 1998

Petitioner : Ramakant Swarnkar

VERSUS

Respondents : State of M.P. & others

SB : Hon'ble Justice Shri **Satish K. Agnihotri**

Shri P.R. Patankar, counsel for the petitioner.
Smt. Anju Ahuja, Deputy Government Advocate for the respondents No. 1 to 3/State.
Shri H.B. Agrawal, Senior counsel with Smt. Sangeeta Mishra, counsel for the respondents No. 4 and 5.

O R A L O R D E R

(Passed on 21-7-2006)

1. Learned counsel appearing for the petitioner submits that the point of law involved in the facts of the present case is identical to that of in Writ Petition No. 546/1991 decided on 28.11.1997 by the High Court of Madhya Pradesh at Jabalpur (Dushyant Kumar Sharma Vs. State of M.P. & others). Learned counsel further submits that the petitioner was similarly situated and he was working in the same institution i.e. Dau, R.P. National Higher Secondary School, Durg. Case of the petitioner was also considered by the D.P.C. A recommendation was made in his favour.

2. The Writ Petition No. 546/1991 on the similar facts, has been decided in following terms,

> *"para5. The only question now appears to be decided is what relief should be granted to the*

petitioner in respect of his emoluments. In view of the fact the petitioner was working from 1-10-88 as a lecturer in English, he is entitled to be paid his full salary including the arrears of salary despite the condition of his appointment which appears to be prima facie illegal. The condition mentioned in the order dated 30-9-88, Annexure-B to the effect that the petitioner shall not be paid his salary unless a grant is received, could not have been made by the respondents No. 3 and 4 for the reason that the petitioner was not an employee of the State Government. The petitioner was the employee of the Society and the School and, therefore, it was their primary duty to pay him salary whether the State Government paid them grant or not. However, it is also the duty of the State Government to pay the grant in respect of the teachers employed by the School. Therefore, it is further directed that the respondents No. 3 and 4 shall pay to the petitioner full salary from 1-10-88 for his work done as a lecturer in English in accordance with law. They shall also pay the arrears of salary to the petitioner even if the grant is not given by the State Government. They shall not await the grant. However, the respondent No. 1 is directed to release the grant within two months from the date of passing of this order and pay the petitioner all the arrears of his salary. The petitioner is also entitled to interest at the rate of 6% (six percent) per annum on the amount of arrears, from the respondents No. 3 and 4, who had employed the petitioner and taken work from

him. The amount of security, if any, outstanding, shall be refunded to the petitioner."

3. Learned counsel appearing for the respondents No. 4 and 5 disputes the facts with regard to work of the petitioner. However, the fact of the petition in W.P. No. 546 /1991, which was decided with the above terms, was identical and admitted by the counsel.

4. The respondents No. 4 and 5 have not been preferred any Special Leave Petition against the said order and the order has became final.

5. Having regard to the facts and the circumstances of the case, the respondents No. 4 and 5 are directed to consider the case of the petitioner in the light of the judgement and order dated 28.11.1997 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 546/1991 (Dushyant Kumar Sharma Vs. State of M.P. & others) on its merit, in accordance with law, within a period of 12 weeks.

6. For the reasons stated-above, the writ petition stands disposed of. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu